

**Editorial Notes**

## REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in subsecs. (a) and (b)(2), is Pub. L. 85-836, Aug. 28, 1958, 72 Stat. 997, which was classified generally to chapter 10 (§301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 301 of this title and Tables.

Title I of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A) to (C), means title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(B)(ii), (iii), (D), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829. Titles I, III, and IV of such act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

## AMENDMENTS

1989—Subsec. (d). Pub. L. 101-239 added subsec. (d).

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117-328 applicable to plan years beginning after Dec. 31, 2022, see section 320(c) of Pub. L. 117-328, set out as a note under section 414 of Title 26, Internal Revenue Code.

## EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, to which such amendment relates, see section 7894(i) of Pub. L. 101-239, set out as a note under section 1002 of this title.

**§ 1032. Notice and disclosure requirements with respect to lump sums****(a) In general**

A plan administrator of a pension plan that amends the plan to provide a period of time during which a participant or beneficiary may elect to receive a lump sum, instead of future monthly payments, shall furnish notice—

(1) to each participant or beneficiary offered such lump sum amount, in the manner in which the participant and beneficiary receives the lump sum offer from the plan sponsor, not later than 90 days prior to the first day on which the participant or beneficiary may make an election with respect to such lump sum; and

(2) to the Secretary and the Pension Benefit Guaranty Corporation, not later than 30 days prior to the first day on which participants and beneficiaries may make an election with respect to such lump sum.

**(b) Notice to participants and beneficiaries****(1) Content**

The notice required under subsection (a)(1) shall include the following:

(A) Available benefit options, including the estimated monthly benefit that the participant or beneficiary would receive at normal retirement age, whether there is a subsidized early retirement option or qualified

joint and survivor annuity that is fully subsidized (in accordance with section 417(a)(5) of title 26,<sup>1</sup> the monthly benefit amount if payments begin immediately, and the lump sum amount available if the participant or beneficiary takes the option.

(B) An explanation of how the lump sum was calculated, including the interest rate, mortality assumptions, and whether any additional plan benefits were included in the lump sum, such as early retirement subsidies.

(C) In a manner consistent with the manner in which a written explanation is required to be given under 417(a)(3) of title 26, the relative value of the lump sum option for a terminated vested participant compared to the value of—

(i) the single life annuity, (or other standard form of benefit); and

(ii) the qualified joint and survivor annuity (as defined in section 1055(d)(1) of this title);

(D) A statement that—

(i) a commercial annuity comparable to the annuity available from the plan may cost more than the amount of the lump sum amount, and

(ii) it may be advisable to consult an advisor regarding this point if the participant or beneficiary is considering purchasing a commercial annuity.

(E) The potential ramifications of accepting the lump sum, including longevity risks, loss of protections guaranteed by the Pension Benefit Guaranty Corporation (with an explanation of the monthly benefit amount that would be protected by the Pension Benefit Guaranty Corporation if the plan is terminated with insufficient assets to pay benefits), loss of protection from creditors, loss of spousal protections, and other protections under this Act that would be lost.

(F) General tax rules related to accepting a lump sum, including rollover options and early distribution penalties with a disclaimer that the plan does not provide tax, legal, or accounting advice, and a suggestion that participants and beneficiaries consult with their own tax, legal, and accounting advisors before determining whether to accept the offer.

(G) How to accept or reject the offer, the deadline for response, and whether a spouse is required to consent to the election.

(H) Contact information for the point of contact at the plan administrator for participants and beneficiaries to get more information or ask questions about the options.

**(2) Plain language**

The notice under this subsection shall be written in a manner calculated to be understood by the average plan participant.

**(3) Model notice**

The Secretary shall issue a model notice for purposes of the notice under subsection (a)(1),

<sup>1</sup>So in original. A closing parenthesis probably should precede the comma.

including for information required under subparagraphs (C) through (F) of paragraph (1).

**(c) Notice to the Secretary and Pension Benefit Guaranty Corporation**

The notice required under subsection (a)(2) shall include the following:

(1) The total number of participants and beneficiaries eligible for such lump sum option.

(2) The length of the limited period during which the lump sum is offered.

(3) An explanation of how the lump sum was calculated, including the interest rate, mortality assumptions, and whether any additional plan benefits were included in the lump sum, such as early retirement subsidies.

(4) A sample of the notice provided to participants and beneficiaries under subsection (a)(1), if otherwise required.

**(d) Post-offer report to the Secretary and Pension Benefit Guaranty Corporation**

Not later than 90 days after the conclusion of the limited period during which participants and beneficiaries in a plan may accept a plan's offer of a lump sum, a plan sponsor shall submit a report to the Secretary and the Director of the Pension Benefit Guaranty Corporation that includes the number of participants and beneficiaries who accepted the lump sum offer and such other information as the Secretary may require.

**(e) Public availability**

The Secretary shall make the information provided in the notice to the Secretary required under subsection (a)(2) and in the post-offer reports submitted under subsection (d) publicly available in a form that protects the confidentiality of the information provided.

**(f) Biennial report**

Not later than the last day of the second calendar year after the calendar year including the applicability date of the final rules under section 342(e) of the SECURE 2.0 Act of 2022, and every 2 years thereafter, so long as the Secretary has received notices and post-offer reports under subsections (c) and (d) of this section, the Secretary shall submit to Congress a report that summarizes such notices and post-offer reports during the applicable reporting period. The applicable reporting period begins on the first day of the second calendar year preceding the calendar year that the report is submitted to Congress and ends on the last day of the calendar year preceding the calendar year the report is due.

(Pub. L. 93-406, title I, §113, as added Pub. L. 117-328, div. T, title III, §342(a), Dec. 29, 2022, 136 Stat. 5376.)

**Editorial Notes**

REFERENCES IN TEXT

Section 342(e) of the SECURE 2.0 Act of 2022, referred to in subsec. (f), is section 342(e) of div. T of Pub. L. 117-328, which is set out as a note below.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-328, div. T, title III, §342(d), Dec. 29, 2022, 136 Stat. 5378, provided that: "The requirements of sec-

tion 113 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1032], as added by subsection (b) [probably means subsec. (a) of section 342 of Pub. L. 117-328, which enacted this section], shall apply beginning on the applicable effective date specified in the final regulations promulgated pursuant to subsection (e) [set out below]."

REGULATIONS

Pub. L. 117-328, div. T, title III, §342(e), Dec. 29, 2022, 136 Stat. 5378, provided that: "Not earlier than 1 year after the date of enactment of this Act [Dec. 29, 2022], the Secretary of Labor, in consultation with the Secretary of the Treasury, shall issue regulations to implement section 113 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1032], as added by subsection (a). Such regulations shall be applicable not earlier than the issuance of a final rule and not later than 1 year after issuance of a final rule."

PART 2—PARTICIPATION AND VESTING

**§ 1051. Coverage**

This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title) other than—

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(3)(A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c)(18) of title 26;

(4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of title 26 and which does not at any time after September 2, 1974, provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of title 26;

(6) an individual retirement account or annuity described in section 408 of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);

(7) an excess benefit plan; or

(8) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

(Pub. L. 93-406, title I, §201, Sept. 2, 1974, 88 Stat. 852; Pub. L. 96-364, title IV, §411(a), Sept. 26, 1980, 94 Stat. 1308; Pub. L. 101-239, title VII, §§7891(a)(1), 7894(c)(1)(A), (11)(A), Dec. 19, 1989, 103 Stat. 2445, 2448, 2449.)